United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF AND APPENDIX

76-4238

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-4238

SEGUNDO ANTONIO COBOS-CHERRES,
Petitioner,

—v.—

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE
BOARD OF IMMIGRATION APPEALS

BRIEF FOR PETITIONER AND JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
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SEGUNDO ANTONIO COBOS-CHERRES,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

WHETHER PETITIONER, AN ALIEN WHO ENTERED THE UNITED STATES AS A PERMANENT RESIDENT UPON HIS MISREPRESENTATION THAT HE WAS VALIDLY MARRIED TO A UNITED STATES CITIZEN, IS SAVED FROM DEPORTATION BY SECTION 241(f) OF THE IMMIGRATION & NATIONALITY ACT, WHERE PETITIONER WAS OTHERWISE ADMISSIBLE AT THE TIME OF HIS ENTRY AND IS THE FATHER OF A PERMANENT RESIDENT OF THE UNITED STATES.

STATEMENT OF THE CASE

Pursuant to Section 106 of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1105(a), Segundo Antonio Cobos-Cherres petitions this Court for a review of that part of an order rendered by the Board of Immigration Appeals (the "Board") on June 28,1976, dismissing petitioner's appeal from a decision of an immigration judge finding the respondent deportable and denying his motion to terminate the proceedings.

The petitioner contends that the order of the Board should be reversed since he is eligible for relief from deportation pursuant to the waiver provisions of Section 241(f) of the Act, 8 U.S.C. 1182 (a)(14).

STATEMENT OF FACTS

The petitioner is a native and citizen of Ecuador. He entered the United States on May 30,1973, upon presentation of an immigrant visa issued to him by the American Consulate at Guayaquil, Ecuador, based in part on his marriage to a United States citizen. He was inspected by an immigration officer and admitted as a permanent resident of the United States. His marriage was void from its inception because the petitioner had a prior marriage which had not been legally terminated. The petitioner fraudulently misrepresented his marital status in obtaining his immigrant visa. Deportation proceedings were instituted by the United States Immigration and Naturalization Service (the "Service) against the petitioner charging that he was subject to deportation under Section 241(a)(1) of the Act in that at the time of his admission to the United States he was excludable under Section 212(a)(14) (lack of labor certification) and 212(a)(20) (lack of valid visa). At the hearing, the Service lodged an additional charge against petitioner, alleging that he was excludable at the time of entry under Section 212(a)(19) for having obtained a visa by fraud or misrepresentation.

At the deportation hearing, it was established that at the time petitioner entered the United States as a permanent resident he was the parent of a permanent resident of the United States. 1/

1/ The decision of the Board refers to the petitioner as the parent of a United States citizen but this is a typographical error.

The immigration judge found, and the Service conceded that the charge relating to the lack of a valid labor certification could not be sustained.[2/] The immigration judge also concluded that the fraud charge relating to Section 212(a)(20) of the Act had been sustained, in that petitioner's visa was not valid at the time of his entry because of a prior existing marriage, and that the petitioner was therefore deportable.

Petitioner moved to terminate deportation proceedings on the ground that he was saved from deportation under the waiver provisions of Section 241(f) of the Act. The immigration Judge denied the request relying on the Board's decision in Matter of Montemayor, Int. Dec. 2399 (1975), wherein the Board held that Section 241(f) does not apply to any charge based on Section 212(a)(20)of the Act.

An appeal from the decision of the immigration Judge was taken to the Board of Immigration Appeals. On June 28, 1976, the Board affirmed the decision of the Judge and dismissed the appeal, relying on its decision in Montemayor. One Board member dissented.

On November 8, 1976, this petition for review followed.

2/ Under Section 212(a)(14) of the Act, the parent of a permanent resident is exempted from the requirement of obtaining a labor certification, 8 U.S.C. 1182(a)(14).

RELEVANT STATUTES

Immigration and Nationality Act, 66 Stat. 163(1952) as amended:

Section 212, 8 U.S.C. 1182 -

(a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact.

Section 241(f), 8 U.S.C. 1251f -

The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

Section 211, 8 U.S.C. 1181, prior to its amendment read as follows:

(a) No immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unespired immigrant visa or was born subsequent to the issuance of such immigrant visa of the accompanying parent, (2) is properly chargeable to the quota specified in the immigrant visa, (3) is a nonquota immigrant if specified as such in the immigrant visa, (4) is of the proper status under the quota specified in the immigrant visa, and (5) is otherwise admissible under this Act.

INTRODUCTION

A. HISTORICAL BACKGROUND.

The Immigration and Nationality Act of 1952 [3] created a new ground for the exclusion of aliens, that had originally appeared in the emergency refuge relief legislation.[4] The present statute, Section 212(a)(19) of the Act, bars an alien who has procured a visa by fraud of misrepresentation.[5]

Recurring hardships in the enforcement of this section eventually led to a legislative determination that it was excessively severe, since it permanently barred an alien from entry regardless of his family situation. Another major concern involved the deportation of refugees from totalitarian countries who had misrepresented their birth places in order to avoid repatriation to their homelands. When the Act was amended in 1952, Congress had proposed a similar waiver but it was deleted by the Conference Committee in the hope that the Service would not apply the fraud provisions as a matter of administrative discretion.When the Service continued to deport aliens who had made misrepresentations, Congress in 1957 provided

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3/ Act of June 27, 1952, P.L. 82-414, 66 Stat. 163, 8 U.S.C. 1101 et seq.

4/ Sec. 10, Displaced Persons Act of 1948, as amended, 62 Stat. 1009; Sec. 11(e), Refugee Relief Act of 1953, 67 Stat. 400.

5/ Sec. 212(a)(19), Act of 1952, 8 U.S.C. 1182(a)(19).

relief in a number of situations.[6] This legislation was substantially reenacted in 1961 [7] as a humanitarian measure to ease the plight of aliens who had entered the country by fraud but who had close family ties with American citizens or permanent resident aliens. The provision was intended to keep families together by relaxing some of the rigorous provisions of existing law.[8] Once the alien qualified under the provisions of Section 241(f), he was not subject to deportation and the waiver was automatic.[9]

B. INS v. SCOTT-ERRICO

After the passage of Section 241(f), the Service initially believed that a narrow reading of the statute was required in order to avoid giving greater benefits to a wrong-doer than to the law-abiding. Therefore, the early administrative interpretation of the statute was restrictive. It was the position of the Service that the waiver provision of the section forgave only the ground of excludability based on the

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6/ Sec. 7, Act of Sept. 11, 1957, 8 U.S.C. 1251(a).

7/ Secs. 212, and 241(f) of the Act of 1952, as amended, 8 U.S.C. 1182(i), 1251(f).

8/ Persaud v. I.N.S., F.2d , Civ. No. 75-1499, (3 Circuit, June 29, 1976), citing Gordon & Rosenfield, Immigration Law and Procedure S 47(c) (1975). The legislative history of the statute is reviewed at length in I.N.S. v. Scott-Erico, 385 U.S. 214(1966) and Reid v. I.N.S., 420 U.S. 619(1975).

9/ De Leon v. INS, F.2d , Civ.75-4151, (2 Cir. October 18, 1976); Persaud v. INS, supra.

misrepresentation but did not include a waiver of the quota restrictions evaded by the alien.[10/] As a result, the alien was still deportable and the situation which the statute intended to remedy did not apply to numerous situations. This confusion was settled by the Supreme Court in 1966, in INS v. Errico and its companion case, Scott v. INS, supra. In these cases, the Court took an expansive view contrary to that of Service and ruled that the benefits of the waiver forgave both the misrepresentation and the evasion of quota restrictions. The Court took a generous view of the statute and its holding appeared to suggest that other grounds of excludability could be waived other than that of misrepresentation, and also that aliens who did not enter as immigrants could benefit from the provisions of the section. Consequently, aliens who entered the United States as tourists, crewman, stowaways, or by falsely claiming United States citizenship attempted to take advantage of the Court's decision claiming that because of their requisite family ties they were immune from deportation.

On the contrary, the Service continued to hold to its restrictive position and limited the application of the section to the specific holding in Errico, that the waiver favored only those aliens who entered the United States as lawful permanent residents with an immigrant visa issued to them by an American Consul abroad which required the alien to undergo the standard

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10/ Gordon and Rosenfield, supra.

visa issuing process and to be found to satisfy all applicable immigration requirements other than those relating to his misrepresentation and evasion of quota restrictions.[11/] [12/]

Because the decision in Scott-Errico did not fully clarify the meaning of Section 241(f), and after a division in the Circuits,[13/] the Supreme Court in 1974 granted certiorari in the case of Reid v. INS.[14/]

C. REID V. INS.

In Reid the Supreme Court held that Section 241(f) did not apply to an alien who had entered the United States under a false claim to United States citizenship and who was charged with being deportable as an alien who had entered without inspection under Section 241(a)(2) of the Act. The Court was of the opinion that Section 241(f) does not apply when the ground for deportation is seperate and independent from the basis for exclusion under Section 212(a). While the Court reaffirmed Errico, and limited its holding to the precise issue then decided, it appears to have given a more restrictive reading to Section 241(f) than it did in Errico.

11/ Matter of Lee, 14 I & N Dec. 214 (1974).

12/ Any alien seeking entry into the United States as an immigrant must submit an application to an American Consul under oath, undergo registration, fingerprinting and prescribed mental and physical examinations, and present numerous documents bearing on eligibility, including a passport, birth records, police certificates, prison and military records. See 221 and 222 of Act 8 U.S.C. 1201 and 1202.

13/ Reid v. INS 492 F. 2d (C.A. 2d 1974) and Lee Fook Chuey v. INS, 439 F. 2d 244 (C.A. 9th 1976).

14/ 420 U.S. 619 (1975).

Unfortunately, except for its generally restrictive thrust, Reid did not supply a clear definition of the scope of Section 241(f).[15] Dicta in the decision has resulted in more confusion, culminating in further litigation, a division in the Circuits, and the basis for the present appeal before this Court.[16]

D. RECENT ADMINISTRATIVE AND JUDICIAL DECISIONS.

Relying upon dicta in Reid, the Board has adopted an administrative position recently that Section 241(f) applies only in instances where the Service chooses to specifically charge the alien as being deportable under Section 212(a)(19) as having obtained his immigrant visa by fraud or misrepresentation.[17] Even if the alien is subject to deportation under 212 (a)(19) but the Service chooses to charge him as deportable as not in possession of a valid visa under 212(a)(20), then the waiver provisions do not apply.[18] In arriving at this conclusion the Board admitted that as a practical matter the benefits of 241(f) are no longer applicable to a deportable alien who entered by fraud or misrepresentation.[19]

The United States Court of Appeals for the Fourth Circuit has recently rejected the view of the Board based on its interpretation of Reid and also found that the Service policy is an unlawful exercise of prosecutorial discretion.[20]

15/ Gordon & Rosenfield, supra.

16/ See Persaud v.INS, supra

17/ Matter of Montemayor, Interim Decision 2399(1975)

18/ Ibid.

19/ Ibid.

20/ Persaud v. INS, supra.

The Second Circuit in dicta, appears to agree with the Fourth Circuit.[21] The Fifth and Ninth Circuits recently have appeared to have adopted an approach similar to that of the Board.[22]

ARGUMENT

The decisions of the Supreme Court of the United States and the Circuit Court of Appeals support a finding that petitioner is entitled to relief under Section 241(f) of the Act.

Section 212(a) of the Act sets forth thirty-one classes of aliens who are excluded from admission to the United States as a permanent resident. The vast majority of these classes are delineated by qualitative factors such as drug addiction, mental retardation, past criminal record, or membership in subversive organizations. There are two exceptions. Section 212(a)(19) excludes aliens who seek to enter by fraud and Section 212(a)(20) excludes those who do not have valid entry documents such as a passport, re-entry permit, alien registration card or visa. The two subsections are frequently both applicable to the same factual situation.

Section 241(a) is a deportation statute and sets forth classes of aliens already in the United States who may be deported. Subsection 241(a)(1) subjects to deportation those aliens who are excludable under Section 212(a).

21/ Pereira-Barreira v. INS, 523 F. 2d 503 (2d Cir. 1975).

22/ Escobar-Ordonez v. INS, 526 F. 2d 969 (5th Cir. 1976); Guel-Perales v. INS, 519 F. 2d 1372 (9th Cir. 1975); Castro-Guerrero v. INS, 515 F. 2d. 615 (5th Cir. 1975).

Subsection 241(f) is a limitation on the deportability provisions of Section 241, and forgives the alien who entered the United States by fraud or misrepresentation.

Section 211(a) prior to its amendment provided that no immigrant shall be admitted into the United States unless at the time of his application for admission he "(3) is a non-quota immigrant if specified as such in the immigrant visa, (4) is of the proper status under the quota specified in the immigrant visa." After its amendment subsection (3) was removed, but the section still remains the underlying statutory provision for the necessity of a valid visa and passport.

In Errico, the alien gained entry by misrepresenting that he was a skilled mechanic and qualified for a first preference quota status under the then existing law. A year after his admission for permanent residence he became the father of a United States citizen child. Deportation proceedings were instituted against Errico under Section 241(a)(1) charging him with being excludable at entry under Section 211(a)(3), in that he was "not of the proper status under the quota specified in the immigrant visa.

Scott obtained her visa based on her marriage to a United States citizen. This marriage was a fraud and contracted solely for the purpose of obtaining exemption from quota restrictions. After her admission she gave birth to a citizen of the United States. The Service also charged her with being deportable under 241(a)(1) in that she was excludable at entry under

Section 211(a)(3) as not a non-quota immigrant as specified in the visa issued to her. The Service choose not to deport the aliens under Section 212(a)(19) and claimed they were deportable because not having met quota requirements, the aliens were not "otherwise admissible" under the terms of Section 241(f). The Court disagreed and held that despite the fact that the language of Section 241(f) closely tracts with that of 212(a)(19), the waiver provisions are not limited to those excluded under that statute. Aliens with the requisite family ties are saved from deportation even though they were charged with deportation under Section 211(a) which make excludable aliens who have failed to comply with quota restrictions. In the decision the Court stated:

> "At the outset it should be noted that even the Government agrees that 241(f) cannot be applied with strict literalness. Literally, 241(f) applies only when the alien is charged with entering in violation of 212(a)(19) of the statute, which excludes from entry 'any alien who...has procured a visa or other documentation...by fraud, or by wilfully misrepresenting a material fact.' Under this interpretation, an alien who entered by fraud could be deported for having entered with a defective visa or for other documentary irregularities even if he would have been admissible if he had not committed the fraud. The Government concedes that such an interpretation would be inconsistent with the manifest purpose of this section, and the administrative authorities have consistently held that 241(f) waives any deportation charge that results directly from

> the misrepresentation regardless of the section of the statute under which the charge was brought, provided that the alien was 'otherwise admissible at the time of entry.'"

In Reid, the alien entered the United States by falsely claiming to be a United States citizen, thereby evading the entire visa issuance and inspection process. Deportation proceedings were instituted against the alien under Section 241 (a)(2) - failure to undergo inspection upon entry.

The Service argued that to extend the provisions of Section 241(f) to aliens who did not enter as immigrants but as tourists, crewman, stowaways or by falsely claiming United States citizenship would have "extremely deleterious effects on the enforcement of the immigration laws" resulting in substantial erosion of the effectiveness of the entire immigration system. The Service conceded that "in order for the statute to have any effect it must be read as forgiving not only the fraud in the application for the visa, but also the entry on the resultant defective visa." It argued, however, that the failure to obtain any visa at all was not a "fraud-related administrative requirement of admissibility...."

In the Government's view, Congress did not intend that its concern for the preservation of family unity be used as a justification for undermining the integrity of the policy considerations which make it important for all aliens to be inspected at the border even if they have valid approval and proper entry documents authorizing them to enter the United

States. In light of these policy considerations, the Court felt that it would be wholly improper and highly destructive of the immigration system to allow aliens to avoid the inspection process by falsely claiming to be citizens and then to subsequently avoid any sanction for their conduct by taking advantage of the relief provisions of Section 241(f). It cautioned against reading Section 241(f) in the expansive manner followed by a number of courts since Errico, but it chose not to overrule its prior decisions in Errico and in Scott.

The facts in Reid are distinguishable from the facts in the instant case. Not only did petitioner herein submit to all of the appropriate entry inspection requirements when he entered the United States, but petitioner also satisfied those inspection requirements in all respects. No defects, criminal violations, moral turpitude, or other substantive grounds for exclusion were revealed in the inspection. Unlike the fact situation in Reid, application of Section 241(f) relief to petitioner would not jeopardize the integrity of the immigration system in any way.

At the same time, no meaningful distinction between the facts in Errico and Scott and the facts in the instant case can be found. While the exact misrepresentation in Errico differs from that in the instant case, the contrast is a distinction without a real difference. In each case, the alien made a misrepresentation to the immigration authorities in order to

obtain a preferred status qualifying the alien for entry into the United States. As a result of the misrepresentation, each alien received a permanent residence visa which appeared valid on its face. Each alien went through the normal inspection process, and each alien was permitted to enter the United States and to reside there for a time without question.

The misrepresentation in Scott was the same misrepresentation made by petitioner herein, namely, that the alien was entitled to preferential entry status as the spouse of an American citizen. Indeed, Scott involved an almost identical fact situation to that raised herein. Except for the difference in the statutory sections relied upon by the Service in seeking deportation (Section 211(a) in Scott; Section 212(a)(20) herein), there are no real differences. If anything, the fraud committed by the petitioner was unnecessary since at the time he entered the United States his son was already a permanent resident of the United States, and petitioner could have applied for residence based on this family relationship. A decision permitting him to remain in the United States would not jeopardize the enforcement of the immigration laws.

The reasoning of the Supreme Court in Scott-Errico would dictate a favorable decision in petitioner's case by this Court. It is submitted that the actual decisions in those cases have been reaffirmed by Reid, and together with Reid, control the question facing this Court.

Relying upon certain dicta in Reid, the Board in Matter of Montemayor, has adopted the position that Section 241(f) applies only when the Service chooses to specifically charge the alien as being deportable under Section 212(a)(19). Even though the alien is subject to deportation under Section 212 (a)(19) if the Service chooses to charge him as deportable as not in possession of a valid visa under Section 212(a)(20), then the waiver provisions do not apply.

The factual situation in Montemayor was identical to the instant case. Both aliens having obtained residence based on marriage to a United States citizen and their marriage being void from the inception because of a prior marriage which had not been legally terminated.

The basis for the Board's present position appears to be the following language from Reid:

> In view of the language of Section 241(f) and the cognate provisions of Section 212(a)(19), we do not believe Errico's holding may properly be read to extend the waiver provisions of Section 241(f) to any of the grounds of excludability specified in Section 212(a) other than subsection 19. This conclusion, by extending the waiver provision of Section 241(f) not only to deportation based on excludability under Section 212(a)(19), but to a claim of deportability based on fraudulent misrepresentation in order to satisfy the requirements of Section 211(a), gives due weight to the concern expressed in Errico that the provisions of Section 241(f) were

> intended to apply to some misrepresentations that were material to the admissions procedure. It likewise gives weight to our belief that Congress, in enacting Section 241(f), was intent upon granting relief to limited classes of aliens whose fraud was of such a nature that it was more than counterbalanced by after-acquired family ties; it did not intend to arm the dishonest alien seeking admission to our country with a sword by which he could avoid the numerous substantive grounds for exclusion unrelated to fraud, which are set forth in Section 212(a) of the Immigration and Nationality Act. (footnote omitted)

It is important to note that Mr. Justice Rehnquist's explanatory comments do not constitute the holding in Reid. Concerning Scott-Errico, the Court expressly stated that "We adhere to the ruling in that case..." Instead, they represent a two-fold statement that Congress did not intend Section 241 (f) as a "sword" by which aliens could totally circumvent the entire visa issuance and inspection process and that Errico should not be read so expansively as to make it appear that it resolved whether 241(f) applies to any of the thrity one grounds of exclusion in Section 212(a) other than that of fraud or misrepresentation.

Furthermore, the exclusionary provisions of Section 212 (a) were not involved in Reid. The Service in this case charged that the aliens were deportable under Section 241(a)(2) - failure to present themselves for inspection rather than for having been excludable at the time of entry on one of the

grounds listed in Section 212(a) and therefore deportable under Section 241(a)(1).

Certainly nothing in the Reid opinion can justify the extreme position which the Service has taken in Section 241(f) cases. The Board has stated that its interpretation of Reid "means that there will virtually always be an alternative ground of deportability, not affected by Section 241(f), in any case in which deportability can be predicated in Section 212(a)(19)." Consequently, the Board has administratively repealed Section 241(f). It is important to note that the Board's position is not unanimous. In the instant case, Board Member Irving A.Appleman dissented for the reasons set forth in his separate opinion in Montemayor, holding that the case was to all intents and purposes identical with Scott-Errico, which the Supreme Court refused to overrule in Reid. His decision is set forth almost verbatim as follows:

> "As I stated in Matter of Munguia-Mendoza, Interim Decision ____,BIA (May 5,1975), Reid v.INS is not without its ambiguities. There is, indeed, language in Reid which supports the position taken by the majority. However, in Reid the Court expressly stated "We adhere to the ruling in that case..." (i.e.INS v. Scott-Errico, 385 U.S. 214 (1966). It then gave as its interpretation of Scott-Errico that where the Service chooses not to seek deportation under the section 212(a)(19) fraud provisions, but instead asserts a failure to

comply with the requirements of section 211(a),(8 U.S.C.1181(a)--the statutory provision relating to the requirement of a valid visa and to status under the quota for visa purposes, in effect when Scott-Errico was instituted), then Scott-Errico extends the cloak of section 241(f),(8 U.S.C.1251(f)) to a claim of deportability based on fraudulent misrepresentation in order to satisfy the requirements of section 211(a). It further noted that Errico expresses a concern that section 241(f) was intended to apply to some misrepresentations that were material to the admissions procedure.

As the majority decision points out, section 211 was amended by the Act of October 3,1965, 79 Stat.911, 917. It remains the underlying statutory provision for the necessity of a valid visa and passport, but the language "is a non-quota immigrant if specified as such in the immigrant visa" (section 211(a)(3) was removed. We now have the definition of "immediate relative" found in section 201 (8 U.S.C.1151). As before, the spouse of a United States citizen continues exempt from "quota", or, as now designated, "numerical" limitations. The difference is primarily one of nomenclature.

The respondent here, as in Scott, obtained an exempt status and a visa, by fraudulent representation that he was validly married to a United States citizen. Had this case originated prior to the 1965 amendment the charge would have lain under 211(a). There is little doubt in my mind that if section 211(a) were still in use, this Board would be constrained to find the charge under section 212(a)(20) waived under Scott-Errico, particularly since

it is coupled with section 212(a)(19). In Scott-Errico the Court had no difficulty in applying 241(f) to section 211(a), despite the absence of a charge under section 212(a)(19).

As noted above, the relevant provisions of section 211(a) remain virtually intact in the Immigration and Nationality Act, albeit under a different section and with somewhat different terminology. The decision in Reid is nowhere premised on the fact that section 211(a) was amended in 1965. The sole reference to that amendment appears in a footnote to the majority decision. The substantive legal provisions involved in Scott-Errico have the same vitality as when that proceeding was instituted. Scott-Errico was reaffirmed in Reid. It is not reasonable to interpret Reid as saying Scott-Errico will have force only in the remote contingency of another case still being alive involving section 211(a). On the other hand it is eminently reasonable to view it as continuing the protection of section 241(f) in any case which is virtually identical to Scott-Errico. I would hold to this position even if the charge were not specifically joined to section 212(a)(19). That it is joined here makes the case even stronger.

Nor do I deem it in any way significant that the charge is predicated on the ground of inadmissibility in section 212(a)(20) -- lack of a valid visa at time of entry -- rather than section 201(b). This would be a distinction without a difference. The essence of the fraud was a misrepresentation obtaining an advantage in the admissions

> procedure, under precisely the same facts as in Scott. In my opinion the respondent would be entitled to a waiver of the charges based on section 212(a)(20) and section 212(a)(19), under section 241(f) as interpreted by Scott-Errico, and reaffirmed in Reid, except for his inability to meet the "otherwise admissible" requirement of section 241(f) because of section 212(a)(14).
>
> I fully realize, as pointed out by my colleagues, that this could have the effect of continuing many of the absurdities already encountered in seeking to apply Errico. Nevertheless, the Court could have overruled Errico and deliberately refused to do so. Errico must therefore be given force as reasonably as possible. I do not believe it incumbent on this Board, any more than the courts, to interpret remedial legislation, and judicial readings of that legislation, narrowly against the alien. See Matter of M, 8 I&N Dec.118 (BIA 1958;AG.1959); Matter of Y.K.W., 9 I&N Dec.176 (AG.1961); Rosenberg v. Fleuti 374 U.S.449 (1963)."

In Persaud v. INS, the Fourth Circuit recently rejected the Board's interpretation of Reid.

Persaud entered the United States upon presentation of an immigrant visa issued to him by the American Consul at Toronto, Canada, based on his marriage to a United States citizen. He underwent the full visa issuance and inspection process but did not reveal that his wife had died. As in the instant appeal

deportation proceedings were instituted against the petitioner charging that he was deportable under 212(a)(19) - misrepresenting that his wife was alive and 212(a)(20) - lack of valid visa. Persuad claimed that his misrepresentation was forgiven under 241(f) since he was now again married to a United States citizen. The Board held that he was excludable on entry under 212(a)(20) and not entitled to the waiver provisions of 241(f). After analyzing the decision in Scott-Errico and Reid, the court stated:

> "From this, we believe that the essence of Reid and Errico is that section 241(f) will not be available when its application would permit an alien to avoid a basis for deportation which is separate, independent and unrelated to the fraud. However, Reid does not hold that section 241(f) may be circumvented by the Service when the fraudulent acts alone form the basis for deportation.
>
> A wooden application of Reid's dicta would permit the INS to freely avoid implication of section 241(f) by simply citing subsection 20 as a basis for deportation in addition to a quota violation or the fraud itself. It is important to recognize the relationship between exclusion for fraud under section 212(a)(19) and exclusion for invalid documentation under section 212(a)(20). Fraud in procuring documentation results in its invalidity so that whenever acts of fraud are perpetrated in securing documents, subsection 20, as well as subsection 19, is violated. Subsection 20, therefore, is, for all intents and purposes, a "lesser included offense" under subsection 19.

An alien cited only under subsection 19 may invoke the forgiveness provisions of section 241(f). However, adopting its restrictive interpretation of Reid, the Immigration Service, if it chooses, may, under the exact same set of facts, charge the alien with the additional, ever present, violation of (20) or only with a violation of (20), and, thus, deprive him of the benefits of section 241(f). Practically speaking, then, the administrative agency may effectively thwart the congressional intent through its unfettered discretion to charge a violation of a lesser offense and so nullify the forgiveness provisions. We do not believe that the Supreme Court intended to allow an administrative agency to exercise such power, especially since section 241(f) entails no exercise of discretion by the Attorney General. See 1 C.Gordon and H.Rosenfield, Immigration Law and Procedure, supra at 4.7(c).

At the hearing of this matter before the immigration judge, petitioner Persaud conceded that he had been admitted to the United States as the husband of Paula Persaud, that she had died on November 8,1972, and that he did not disclose this fact when he obtained his visa. The testimony which was taken did little more than elaborate on these facts. Based on this evidence, the Immigration Service found violations of both subsections 19 and 20. Since the facts which support a finding of deportability based on (19) also establish a violation of (20), the charges are not separate and independent but, rather, are inextricably intertwined. Thus Reid's raison d'etre is absent in this case, and we conclude that the Board of Immigration Appeals erred in refusing to consider the availability of relief under section 241(f)."

In Pereira-Berreira v. INS, this Court considered the case of an alien who entered the United States as a tourist and then while in the United States obtained a sixth preference visa approval and permanent residence through adjustment of status. The documentation submitted by the alien attesting to his skills was fraudulent. Deportation proceedings were instituted against the alien under section 241(a)(2) charging that he was deportable as an alien who remained in the United States beyond the period of his authorized stay in violation of section 241(a). The alien claimed the benefits of section 241(f) because of his requisite family ties. This Court rejected the alien's claim on the ground that the obtaining of permanent residence in the United States by the process of adjustment of status did not constitute an "entry" and that section 241(f) applies only to an alien excludable at entry. The opinion of this Court reaches beyond the narrow holding. In construing Reid the Court stated:

> "The import of Reid is clear. Section 241(f) comes into play only when deportation is sought under the combination of Sections 241(a)(1) and 212(a)(19), or the substantially equivalent situation in Errico, supra. (emphasis supplied)
>
> In Errico, the two aliens who the INS sought to deport had entered the United States through fraudulent representations in order to evade quota restrictions. The

> INS, in seeking to deport them, relied on the pre-1965 version of Section 211(a), 8 U.S.C. S 1181(a) (1964), claiming that they lacked the necessary documentation for admission to the United States. It could have relief on Section 212(a)(19), however, since the aliens had obtained admission by fraud. ____U.S. at _____,43 U.S.L.W. at 4389-90. The essence of Errico, as interpreted by Reid, is that aliens deportable under Section 212(a)(19) should not be deprived of the waiver provision of Section 241(f) by the INS's decision to rely on another Section of the deportation. ____ U.S. at _____;43 U.S.L.W. at 4391."

That the substantially equivalent of Errico exists in the case at bar has been conceeded by the Board when it stated in Montemayor that:

> "We recognize that a charge of deportability based on Section 212(a)(20) is quite analogous to one of the 211(a) charges that were in issue in INS v Errico, supra, and that the Supreme Court in Reid did not overrule Errico."

In De Leon v. INS, the alien entered the United States by impersonating a permanent resident using another person's alien registration card. For this act, he was convicted under 18 U.S.C. Section 1546.

Proceedings instituted against the alien charged that he was deportable under Section 241(a)(5), which makes his conviction a specific ground for deportation.

The alien sought to invoke the benefits of Section 241 (f) because his entry was based on fraud and asserted that the Service should not be permitted to circumvent section 241(f) by charging him with deportation under section 241(a)(5) rather than a combination of sections 241(a)(1) and 212(a)(19).

This Court rejected the alien's contention holding that section 241(f) was not intended to waive deportability for conduct specifically made a criminal violation as well as a specific ground for deportability. In arriving at its conclusion, the Court felt that it would be anomalous to hold that an alien who is convicted of impersonating a permanent resident can escape deportation on the ground that his criminal act involved a fraud at entry. The Court went on to reaffirm their decision in Barreira, and cite Reid for the proposition that section 241(f) was not intended to apply to an alien whose entry frustrated the entire inspection process and thus undermining the orderly administration of the immigration laws.

The United States Court of Appeals for the Fifth Circuit appears to have adopted an approach similar to that being followed by the Board in Castro-Guerrero v. INS and its companion case Ruiz-Salazar v. INS.

In Castro, the alien entered the United States as a permanent resident but abandoned his residency by his absence from the United States for six years and failure to comply with the requirement of reporting his change of address.

Deportation proceedings were instituted against the alien charging him with deportation under Section 212(a)(20)- lack of valid immigrant visa. The alien charged the benefits of section 241(f) on the ground that when he reentered the United States he misrepresented the abandonment of his residency. The Court rejected his claim holding that the forgiveness section is not available to an alien deportable under Section 212(a)(20).

The Court of Appeals for the Ninth Circuit in Guel-Perales v. INS alludes to the position of the Fifth in its decision. But its position is far from clear since the aliens in the case also entered the United States by falsely claiming to be United States citizens. Since the specific holding in Reid was that the provisions of section 241(f) do not apply to an entry by a false claim to citizenship, the Court was bound to the ruling in Reid.

In our view, the decision of the Fifth Circuit in Castro Guerrero misconstrues the opinion in Reid. According to the Fifth Circuit, Reid, despite its narrow holding, sustituted for the Errico approach a "bright lines test" under which Section 241(f) will be found to have waived the fraud on the part of an alien only where deportation is sought under Section 241(a)(1)[23/] for excludability under Section 211(a),

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23/ As initially reported, the Fifth Circuit refers in its opinion to"Section 242(a)(1)." This is evidently a typographical error, and the correct statutory reference is incorporated above.

as in Errico, or where deportation is sought under Section 241(a)(1) for excludability under Section 212(a)(19) and not under any other provision, including Section 212(a)(20). According to the Fifth Circuit, "The only factor that need now be considered in determining the applicability of the forgiveness provision is the section of the Act under which deportation is sought and found to exist."

The decision of the Fifth Circuit appears to be based largely on the words of Mr. Justice Rehnquist at the end of the Reid opinion.[24/] But, as pointed out, the language in question does not represent the holding in Reid. Indeed, it does not even represent an express assertion of what the proper test in applying Section 241(f) ought to be. What it does represent is a firm statement that Errico's holding is limited and did not cover the question of whether Section 241(f) applies to any of the grounds of excludability specified in Section 212(a) other than subsection 19. This is scarcely an iron-clad "bright lines test." The question of the applicability of Section 241(f) to the grounds of excludability specified in Section 212(a) was not before the Court in Reid any more than it was in Errico. We submit that the decision in Reid does not mandate the conclusion reached by the Fifth Circuit in Castro-Guerrero.

The effect of the approach being followed by the Board and the "bright lines test" adopted by the Fifth Circuit

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24/ See page 16, supra.

would be the complete undermining of Section 241(f). We do not believe that the Court in Reid intended to take such drastic action. While warning against an expansive application of the relief provisions of the statute, the Court expressly adhered to its actual holding in Errico and Scott. Had it intended to lay down a broad test for the application of Section 241(f), it could certainly have done so without ambiguity.

If the Board's approach and the new Castro-Guerrero test are adopted by the courts, the avenue of relief afforded by Section 241(f) since its adoption will be almost entirely eliminated. We submit that the decisions of the Supreme Court in Errico, Scott and Reid do not warrant so harsh a result. In instances like the present case, where the misrepresentation does not threaten the proper working of the immigration system, where no qualitative grounds for exclusion exist, and where the family tie is legitimate, relief from deportation in the interest of family unity should be granted. Where the entire visa issuance and inspection process is bypassed or where serious grounds for exclusion exist; Section 241(f) relief will be unavailable.

POINT II

SECTION 241(f) IS A HUMANITARIAN MEASURE DESIGNED TO PREVENT THE SEPARATION OF FAMILIES. IT WAS INTENDED TO APPLY TO AN ALIEN WHO ENTERED THE UNITED STATES AS A LAWFUL PERMANENT RESIDENT AND UNDERWENT THE STANDARD VISA ISSUANCE AND INSPECTION PROCESS AND WAS FOUND TO SATISFY ALL IMMIGRATION REQUIREMENTS OTHER THAN THOSE RELATING TO HIS MISREPRESENTATION.

In its 1966 decision in INS vs. Errico, the Supreme Court discussed for the first time the legislative history and background of Section 241(f). It concludes that "The fundamental purpose of this legislation was to unite families" and that Congress intended "that immigrants who gained admission by misrepresentation, perhaps many years ago, should not be deported because their countries' quotas were oversubscribed when they entered if the effect of deportation would be to separate families composed in part of American citizens or lawful permanent residents."

In its 1975 decision in Reid vs.INS,the Court took another look at the legislative history of the statute. It did not explicitly reject the discussion in Errico, but cautioned against too expansive a reading of the language of Section 241 (f). Mr. Justice Rehnquist, speaking for the Court, stated that"Congress, in enacting Section 241(f), was intent upon granting relief to limited classes of aliens whose fraud was of such a nature that it was more than counterbalanced by

after-acquired family ties..."

The thrust of Reid and the decisions of this Honorable Court in Reid, Barreira, and De Leon is that the benefits of section 241(f) as it relates to misrepresentation will be available only to an alien who entered the United States for permanent residence with an immigrant visa issued to him by a United States Consul abroad and who has subjected himself to the entire visa issuance and inspection process. This is so because of policy considerations since to extend the forgiveness porivisions to aliens who enter without inspection would have "extremely deleterious effects on the enforcement of the immigration laws, resulting in substantial erosion of the effectiveness of the entire immigration system."

In the case at bar, petitioner falls within the class of aliens protected by the humanitarian provisions of Section 241(f). His misrepresentation did not hide qualitative grounds for exclusion. Aside from the fact that petitioner's visa was regarded as invalid, no grounds for keeping him out of the United States have been shown by the Service. In our view, the deportation of petitioner under the circumstances of this case is precisely the kind of harsh result which Congress attempted to avoid by enacting Section 241(f). His misrepresentation has been more than counterbalanced by his family ties and his respectable life since entering the United States.

POINT III

THE POSITION OF THE BOARD CONSTITUTES AN UNLAWFUL EXERCISE OF PROSECUTORIAL DISCRETION.

In De Leon, this Court held that in contrast to other waiver provisions of the Act, which depend upon the discretionary authority of the Service, the forgiveness provision of Section 241(f) is mandatory and automatic. This view was reiterated in Persaud, when it held that the Board "may effectively thwart the Congressional intent through its unfettered discretion to charge a violation of a lesser offense and so nullify the forgiveness provisions." In a like manner, the Service can arbitrarily charge aliens in the same situation with different deportation charges. As a result, one alien will be deportable while another not. Thus, by artful selection of charges upon which deportation is sought the Service can now avoid the application of Section 241(f). As a matter of fact, had the Service been clever earlier, not even Scott and Errico would have escaped deportation. This type of selective prosecution is not viewed with favor by the Courts and it constitutes a threat to the Constitutional guarantees of equal protection under the law.

CONCLUSION

THE PETITION FOR REVIEW SHOULD BE GRANTED AND THE ORDER OF THE BOARD OF IMMIGRATION APPEALS REVERSED AND AN ORDER BE ENTERED TERMINATING DEPORTATION PROCEEDINGS BECAUSE PETITIONER COMES WITHIN THE PROVISIONS OF SECTION 241(f).

Respectfully submitted,

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New York, New York 10007

MILTON DAN KRAMER,ESQ.
Of Counsel

January 25,1977.

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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IMMIGRATION AND NATURALIZATION SERVICE, Respondent.	:	Docket No. 76-4238

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76-3569

Respectfully submitted,

ROBERT B. FISKE, Jr.,
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Southern District of New York
Attorney for Respondent

THOMAS H. BELOTE
Special Assistant United States Attorney
Of Counsel

United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

JUL 28 1976

File: A31 168 766 - New York

In re: SEGUNDO ANTONIO COBOS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Milton D. Kramer, Esq.
225 Broadway
New York, N. Y. 10007

CHARGE:

ORDER: Section 241(a)(1), I&N Act (8 USC 1251 (a)(1)) - Immigrant - no visa

Section 241(a)(1), I&N Act (8 USC 1251 (a)(1)) - No valid labor certification

LODGED: Section 241(a)(1), I&N Act (8 USC 1251 (a)(1)) - Obtained visa by unlawful misrepresentation of a material fact

APPLICATION: Termination of proceedings

This is an appeal from a decision of an immigration judge finding the respondent deportable, denying his motion to terminate the proceedings under section 241(f) of the Immigration and Nationality Act but granting him the privilege of voluntary departure. The appeal will be dismissed. 1/

1/ We note that the record of proceedings does not contain a transcript of the deportation hearing. Nonetheless, we shall proceed with a review of this case since the only question raised on appeal is a question of law. We see no prejudice to the respondent.

The respondent is a male alien who is a native and citizen of Ecuador. On May 30, 1973, he was admitted to the United States as a lawful permanent resident on the basis of a marriage to a United States citizen. However, at the time the respondent obtained his visa, he was then married to another woman and that prior marriage had not been dissolved. The Order to Show Cause charges that the respondent is deportable under section 241(a)(1) of the Act in that he was excludable at the time of entry under the provisions of section 212(a)(14) and section 212(a)(20). At the hearing, the Service lodged an additional charge against the respondent, alleging that he is additionally deportable under section 241(a)(1) in that he was excludable at the time of entry under section 212(a)(19) for having obtained a visa through fraud or misrepresentation.

The respondent, who is a native of the Western Hemisphere, is the parent of a United States citizen. The immigration judge found, and the Service conceded that the first charge, relating to the lack of a valid labor certification, could not be sustained. See section 212(a)(14) of the Act. The immigration judge also concluded that the lodged charge predicated on section 212(a)(19) could not be sustained. It is not clear whether the immigration judge based this conclusion on the ground that fraud or misrepresentation in obtaining the visa had not been established; or whether this finding was based on the ground that section 241(f) of the Act removed the lodged charge as a ground of deportability. We note that in this case the latter determination would not form a basis for concluding that the lodged charge could not be sustained.

The immigration judge did find the charge relating to section 212(a)(20) of the Act had been sustained, in that the respondent's visa was not valid at the time of entry because of the prior existing marriage, and that the respondent is therefore deportable. We agree with this conclusion.

On appeal, the respondent does not contest deportability. He argues only that he is saved from deportation by operation of section 241(f) of the Act. In Matter of Montemayor, Interim Decision 2399 (BIA 1975), we held that under the United States Supreme Court's decision in Reid v. INS, 420 U.S. 619 (1975), the benefit of section 241(f) is not available to an alien who has been charged with and been found deportable under section 241(a)(1) as an alien who was excludable at entry under section 212(a)(20).

Counsel for the respondent argues that our decision in Matter of Montemayor, supra, is contrary to the decision of the United States Court of Appeals for the Second Circuit in Pereira-Barreira v. INS, 523 F.2d 503 (2 Cir. 1975). The present case arises in the Second Circuit.

In Pereira-Barreira v. INS, supra, the court held that the benefit of section 241(f) was not available where there had been fraud or misrepresentation in obtaining adjustment of status which had later been rescinded. However, counsel for the respondent relies on dicta in the decision in which the court notes that the effect of the Reid decision is to limit the availability of section 241(f) to situations in which the charge of deportability is grounded on section 212(a)(19) or where there exists a factual pattern equivalent to the situation in INS v. Errico, 385 U.S. 214 (1966). Pereira-Barreira v. INS, 523 F.2d 503 at 508 & n. 5.

We find nothing in the court's language which is necessarily in conflict with our decision in Matter of Montemayor, supra. Moreover, the dicta of the court would not be controlling in this case.

At least two circuits of the United States Court of Appeals have interpreted Reid v. INS, supra, in the same manner in which we have. 2/ Guel-Perales v. INS, 519 F.2d 1372 (9 Cir. 1975); Castro-Guerrero v. INS, 515 F.2d 615 (5 Cir. 1975). We adhere to our decision in Matter of Montemayor, supra. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

2/ In a recent decision, the United States Court of Appeals for the Third Circuit has rejected both our approach and that of the Fifth and Ninth Circuits. Persaud v. INS, ___ F.2d ___, Civ. No. 75-1499 (3 Cir. June 29, 1976). We do not reach the effect of that decision since the present case does not arise in the Third Circuit.

FURTHER ORDER: Pursuant to the immigration judge order, the respondent is permitted to depart from the United States voluntarily within 60 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A31 168 766 - New York

In re: SEGUNDO ANTONIO CUBOS

JUN 28 1976

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Milton D. Kramer, Esquire
225 Broadway
New York, New York 10007

CHARGE:

ORDER: Section 241(a)(1), I&N Act (8 U.S.C. 1251 (a)(1)) - Immigrant - No visa

Section 241(a)(1), I&N Act (8 U.S.C. 1251 (a)(1)) - No valid labor certification

LODGED: Section 241(a)(1), I&N Act (8 U.S.C. 1251 (a)(1)) - Obtained visa by unlawful misrepresentation of a material fact

APPLICATION: Termination of proceedings

DISSENTING OPINION: Irving A. Appleman, Board Member

For the reasons set forth in my separate opinion in Matter of Montemayor, Interim Decision 2399, (BIA 1975), I cannot agree with the decision of the majority. This case is to all intents and purposes identical with INS v. Scott-Arrico, 385 U.S. 214 (1966), which the Supreme Court refused to overrule in Reid v. INS, 420 U.S. 619 (1975). The record does establish a fraud, and it is clear the alien obtained a visa status to which not entitled as a result. I would therefore terminate.

Irving A. Appleman
Board Member

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

File: A31 168 766-New York

In the Matter of:)

SEGUNDO ANTONIO COBOS)

CHERES)

-Respondent-)

MAY 19 1976

In Deportation Proceedings

CHARGE: (Order to Show Cause) -Section 241(a)(1) - I & N Act - Immigrant - no visa. Section 241(a)(1) I & N Act-no valid Labor Certification.

LODGED: Section 241(a)(1)- I & N Act- obtained visa by unlawful misrepresentation of a material fact.

APPLICATION: Termination of proceedings or in the alternative Voluntary-Departure.

In Behalf of Respondent:

Milton D. Kramer,Esq.
225 Broadway
New York,N.Y. 10007

In Behalf of Service:

Alberto Riefkohl,Esq.
Trial Attorney
New York,N.Y. 10007

DECISION OF THE IMMIGRATION JUDGE

This is the case of an adult male, a native and citizen of Ecuador, who last entered the United States on May 30, 1973 upon presentation of an Immigrant Visa.

Counsel, on behalf of his client, and with his client's knowledge and consent, admitted all of the allegations contained in the Order to Show Cause except allegation number seven. This allegation refers to his lack of Labor Certification as required by Section 212(a)(14) of the I & N Act. The respond-

ent admitted that he willfully and knowingly failed to disclose his true marital status to the United States Consul at the time he obtained his visa.

Evidence has been submitted that at the time of entry he had a lawful permanent resident son residing in the United States, Robert Cobos-Cabrera,who had entered the United States as an immigrant on April 8, 1973.

Addressing myself to the first charge in the Order to Show Cause relating to lack of Labor Certification I find that at the time of his admission into the United States he was in fact the the parent of a lawful resident alien. The charge based on his lack of a labor certification (that he was not exempt under the provisions of Section 212(a)(14) of the Immigration and Nationality Act), is therefore not sustained.

The lodge charge relates to false and misleading statements and his entry by fraud. The charge cannot be sustained. His son's residence makes applicable the provisions of Section 241 (f) of the Immigration and Nationality Act and this relieves him from deportation on that charge.

I address myself therefore solely to the charge that he was not in possession of a valid Immigrantion Visa, re-entry permit, border crossing card, or other valid entry documents, and not exempt from the possession thereof by said act or regulation made thereof. (212(a)(20) I & N Act)

It is not contraverted that the respondent obtained an Immediate Relative visa based on a marriage to Rafaela Rios-Gomez, a United States citizen, whom he married in Brooklyn,New York on December 1, 1972. He has admitted that he was

at that time still married to Elena Cabrera whom he married on March 31, 1949 in Ecuador. He has also admitted that he willfully and knowingly failed to disclose his true marital status to the United States Consul at the time he applied for and obtained his visa. The visa he presented was therefore issued based on a state of facts which did not exist. He was not entitled to receive a visa as an immediate relative. The visa therefore is invalid and he is deportable as charge in the Order to Show Cause as one not in possession of a valid, bonafide, immigrant visa.

Counsel, after the close of proceedings, submitted a brief relying heavily on Candido Pereira-Barreira V. I & N Service (2nd Cir. 1975). That person is charge with deportation under Section 241(a)(2), and I find that the decision there is inapplicable here. In making my decision I rely upon the language of the Board of Immigration Appeals in the Matter of Montemayor, Inter. Dec. 2399. The Board held that 241(f) does not apply to any charge based on Section 212(a)(20) because of the invalidity of the visa presented.

ORDER: IT IS ORDERED that in lieu of an order of deportation the respondent be granted voluntary departure without expense to the government on or before sixty days from the date this order became final or any extension beyond such date as may be granted by the District Director and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if the respondent fails to depart when and as required the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become

iately effective; the respondent shall be deported from the United States to Ecuador on the second charge contained in the Order to Show Cause.

William B. Curock
Immigration Judge

1/25/77

Rec'd two (2)
copies Brief

R Malcomson